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Cases, Regulations and Statutes

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CASES, REGULATIONS AND STATUTES

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BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtor filed for chapter 7 in May 2011. The debtor claimed to have filed the returns for 2001 through 2005 in 2007; however, the IRS claimed no record of the 2001 return, even though it received the 2002, 2003, 2004 and 2005 returns in one mailing. The debtor did not pay the taxes for 2001 through 2005 and sought discharge of those taxes. The IRS argued that the taxes were nondischargeble because no return was filed for 2001 and the debtor's multi-year failure to pay taxes demonstrated a willful attempt to evade payment of the taxes. The court noted that the IRS had made an assessment of the 2001 taxes in 2007 and the debtor made no claim that a 2001 return had been filed in 2005. Because the debtor provided no evidence to support a 2005 filing of the 2001 return, the court held that the 2001 taxes were nondischargeable for failure to file a return. The court also held that the 2002 through 2005 taxes were nondischargeable because (1) the debtor had a history of filing returns late, (2) the debtor had a history of failing to pay taxes, (3) the debtor kept property in the name of family members, (4) the debtor's business was owned by a corporation with only family members as shareholders, (5) the debtor had no personal bank accounts and kept all funds in the business accounts, and (6) several items of personal property were owned by the corporation but used for the debtor's personal activities. The court also noted that the debtor had substantial income during the tax years involved and purchased expensive items for the debtor and family members. **Meyer v. United States, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,223 (Bankr. E.D. N.Y. 2013)**.

The debtor had been married to a spouse who owned and operated a computer software business. The business incurred federal tax debts that the debtor learned about when the debtor applied for a loan and discovered that the couple's property was subject to federal tax liens. After consulting with tax advisors, the couple filed for divorce which the spouse did not contest and under which the debtor received the couple's home, which was subject to one of the tax liens. The debtor then borrowed against the value of the house and purchased a second house with part of the proceeds of the loan. The debtor and former spouse both lived in the new house. The Bankruptcy Court held that the federal tax lien against the original house was not discharged because the divorce was a sham in that the former spouse continued to live in the house and the debtor immediately obtained a large loan against the house by which the debtor purchased a second house in the debtor's sole name, although the former spouse also resided in the new house. The appellate court affirmed, holding that the transfer of the house was a fraudulent attempt to remove the house from the federal tax lien. **Schaudt v. United States, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,226 (N.D. Ill. 2013)**.

FEDERAL FARM PROGRAMS

ALMONDS. The AMS had adopted as final regulations revising the United States Standards for Grades of Almonds in the Shell by changing the determination of internal defects from count to weight. These revisions will align the inspection procedures for incoming inspections (based on the almond marketing order) and outgoing inspections (based on the standards). **78 Fed. Reg. 14907 (March 8, 2013)**.

COUNTRY OF ORIGIN LABELING. The AMS has issued proposed regulations amending the country of origin labeling (COOL) regulations to change the labeling provisions for muscle cut covered commodities to provide consumers with more specific information, and to amend the definition for "retailer" to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act. **78 Fed. Reg. 15645 (March 12, 2013)**.

CROP INSURANCE. The FCIC has issued proposed regulation amending the common crop insurance regulations, Arizona-California citrus crop insurance provisions provide policy changes, to clarify existing policy provisions to better meet the needs of policyholders, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2015 and succeeding crop years. **78 Fed. Reg. 17606 (March 22, 2013)**.

ENVIRONMENTAL LAW

LOGGING ROADS. The plaintiff was an environmental group which sued to require logging companies in Oregon to obtain NPDES permits to cover the runoff from logging roads constructed in forests. The EPA had issued a regulation defining the term "associated with industrial activity" to cover only discharges "from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." 40 C.F.R. § 122.26(b)(14) (2006). The EPA interpreted this regulation such that logging roads were not required to obtain a permit. The U.S. Supreme Court held that the EPA interpretation was reasonable and entitled to deference; therefore, no permits were required. The dissent by Justice Scalia raises the possibility that the Court may revisit and possibly change the long-standing principle of deference to agency interpretation of its own rules. **Decker v. Northwest Environmental Defense Center, 2013 U.S. LEXIS 2373 (Sup. Ct. 2013)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the trustee for the decedent's estate retained an accountant to prepare estate tax documents, including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The trustee of the decedent's estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by section 1022 to eligible property transferred as a result of the decedent's death. The IRS granted the extension. **Ltr. Rul. 201310007, Nov. 5, 2012**.

VALUATION. The decedent and pre-deceased spouse had owned an extensive collection of various art works. The couple had created limited-term grantor retained income trusts and contributed several pieces of art to the trusts. When the pre-deceased spouse died, the spouse's trust interest passed to the decedent. At the termination of the trusts, the children received a 50 percent share of the trust assets. In addition, the portion of the art works in the pre-deceased spouse's estate passed to the decedent who disclaimed 26 percent of value of each piece so that portion of the art work value passed to the children. Thus, the children owned fractional shares of the artwork with the decedent. The estate claimed a 44.75 percent discount on the value of the art in the decedent's estate for lack of control and marketability due to owning a fractional interest. The court held that the estate was entitled to a 10 percent discount because the other interest holders, the decedent's children, would immediately purchase any sold fractional interests in the art. **Estate of Elkins v. Comm'r, 140 T.C. No. 5 (2013)**.

FEDERAL INCOME TAXATION

ALIMONY. Under the taxpayer's divorce order, the taxpayer paid $3,000 per month in "family support" which included both alimony and child support but did not specifically allocate the portion that was child support. The IRS denied a deduction to the taxpayer, arguing that the payments were nondeductible child support and did not terminate on the death of the spouse. The court held that, under California law, the death of the former spouse terminated the taxpayer's obligation to pay family support payments. The court also held that, where an unspecified portion of family support payments were child support, the payments still qualified as alimony. **DeLong v. Comm'r, T.C. Memo. 2013-70**.

BUSINESS EXPENSES. The taxpayer was a mortgage broker, real estate agent, and real estate investor who claimed deductions for business travel, car and truck expenses, meals and entertainment, and computer expenses. The taxpayer also claimed expenses associated with a home office and various other expenses. Although the taxpayer provided some receipts, credit card and bank statements and copies of checks, few of the documents provided full substantiation of the dates, duration and business purpose of the expenses; therefore, the court upheld the IRS disallowance of most of the deductions. **Niv v. Comm'r, T.C. Memo. 2013-82**.

CHARITABLE DEDUCTIONS. The taxpayer co-founded and served as president of a ferret rescue organization which was a qualified Section 170(c) exemption organization. The taxpayer made several transfers of funds from the taxpayer's personal checking account directly to the organization's checking account. For amounts over $250, the taxpayer did not obtain a contemporaneous written acknowledgement from the organization containing a description of any property contributed, a statement as to whether any goods or services were provided in consideration, and a description and good-faith estimate of the value of any goods or services provided in consideration. The court held that the taxpayer could not claim charitable deductions for the amounts over $250, noting that the written acknowledgement was essential to providing the IRS information about charitable donations. **Villareale v. Comm'r, T.C. Memo. 2013-74**.

CORPORATIONS

ACCOUNTING METHOD. The taxpayer corporation engaged a tax advisor to prepare and file its federal income tax return and a Form 3115, *Application for Change in Accounting Method*. The advisor represented that, on a certain date, the advisor had timely filed a duplicate copy of a Form 3115 on behalf of the taxpayer with the IRS National office to change the method of accounting for tort liabilities, in accordance with section 6.02(3)(a) of *Rev. Proc. 2011-14, 2011-1 C.B. 330*. Because the taxpayer was under exam, an additional copy of the Form 3115 was timely provided to the examining agent. The taxpayer timely filed its federal income tax return electronically for the taxable year, reflecting the change in the taxpayer's method of accounting for tort liabilities. However, due to an oversight by the advisor, the advisor inadvertently failed to attach the original Form 3115 for the taxpayer's change in method of accounting for tort liabilities to the federal income tax return as required by section 6.02(3)(a) of *Rev. Proc. 2011-14*. The IRS granted an extension of time to file Form 3115. **Ltr. Rul. 201311012, Dec. 14, 2012**.

MUTUAL INSURANCE COMPANY STOCK. The taxpayers, husband and wife, created a trust and used the trust to purchase life insurance policies on their lives. The policies were all purchased from mutual insurance companies. The companies demutualized and the trust received shares of the companies in exchange for its interest in the companies. The trust then sold the shares. Initially, the trust claimed all of the proceeds as taxable but filed for a refund based on the argument that the basis of the stock equalled the IPO value of the stock plus a portion of the premiums paid. The court agreed, holding that the basis of the stock resulted from the mutual and voting rights purchased with the policies. **Dorrance v. United States, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,236 (D. Ariz. 2013)**.

COURT AWARDS AND SETTLEMENTS. The taxpayer represented victims of an unidentified incident who either (1) suffered a cut, scrape, bruise, or other visible physical injury in the incident, or inhaled thick smoke and, as a result, suffered smoke inhalation during the incident, or both, (2) was a close relative (spouse, parent, child, or sibling) of a person who was killed in the incident, or (3) was the estate of a person who was killed in the incident. The taxpayer obtained a settlement and distributed funds to the victims. The IRS ruled that the funds represented damages for physical injuries and would be excludible from the victims' taxable income; therefore, the taxpayer did not need to report the payments to the IRS or withhold any taxes from the payments. **Ltr. Rul. 201311006, Dec. 11, 2012**.

DEDUCTIONS. The IRS has published information on whether to itemize deductions or use the standard deduction amount. *Figure the taxpayer's itemized deductions*. Add up the cost of items the taxpayer paid for during the year that might be deductible. Expenses could include home mortgage interest, state income taxes or sales taxes (but not both), real estate and personal property taxes, and gifts to charities. Deductible expenses may also include large casualty or theft losses or large medical and dental expenses that insurance did not cover. Unreimbursed employee business expenses may also be deductible. *Know your standard deduction*. If a taxpayer does not itemize, their basic standard deduction amount depends on the filing status. For 2012, the basic amounts are:

- Single = $5,950
- Married Filing Jointly = $11,900
- Head of Household = $8,700
- Married Filing Separately = $5,950
- Qualifying Widow(er) = $11,900

Apply other rules in some cases. The standard deduction is higher if the taxpayer is 65 or older or blind. Other rules apply if someone else can claim the taxpayer as a dependent on his or her tax return. To figure the standard deduction in these cases, taxpayers should use the worksheet in the instructions for Form 1040, *U.S. Individual Income Tax Return*. *Check for the exceptions*. Some people do not qualify for the standard deduction and should itemize. This includes married people who file a separate return and their spouse itemizes deductions. See the Form 1040 instructions for the rules about who may not claim a standard deduction. *Choose the best method*. Compare itemized and standard deduction amounts. Taxpayers should file using the method with the larger amount. *File the right forms*. To itemize deductions, taxpayers should use Form 1040, and Schedule A, *Itemized Deductions*. Taxpayers can take the standard deduction on Forms 1040, 1040A or 1040EZ. For more information about allowable deductions, see Publication 17, *Your Federal Income Tax*, and the instructions for Schedule A. **IRS Tax Tip 2013-37**.

DISCHARGE OF INDEBTEDNESS. The IRS has published information on the tax consequences of cancelled or forgiven mortgage debts. Cancelled debt normally results in taxable income; however, taxpayers may be able to exclude the cancelled debt from income if the debt was a mortgage on the taxpayer's main home. To qualify, a taxpayer must have used the debt to buy, build or substantially improve the taxpayer's principal residence and the residence must also secure the mortgage. The maximum qualified debt that can be excluded under this exception is $2 million. The limit is $1 million for a married person who files a separate tax return. Taxpayers may be able to exclude from income the amount of mortgage debt reduced through mortgage restructuring. Taxpayers may also be able to exclude mortgage debt cancelled in a foreclosure. Taxpayers may also qualify for the exclusion on a refinanced mortgage. This applies only if the taxpayer used proceeds from the refinancing to buy, build or substantially improve the taxpayer's main home. The exclusion is limited to the amount of the old mortgage principal just before the refinancing. Proceeds of refinanced mortgage debt used for other purposes do not qualify for the exclusion. For example, debt used to pay off credit card debt does not qualify. If a taxpayer qualifies, the taxpayer reports the excluded debt on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness*. The taxpayer submits the completed form with the federal income tax return. Other types of cancelled debt do not qualify for this special exclusion, including debt cancelled on second homes, rental and business property, credit cards or car loans. In some cases, other tax relief provisions may apply, such as debts discharged in certain bankruptcy proceedings. Form 982 provides more details about these provisions. If a taxpayer's lender reduced or cancelled at least $600 of mortgage debt, the lender normally sends to the taxpayer a statement in January of the next year. Form 1099-C, *Cancellation of Debt*, shows the amount of cancelled debt and the fair market value of any foreclosed property in Box 2, and the value of the taxpayer's home is shown in Box 7. The taxpayer should notify the lender immediately of any incorrect information so they can correct the form. See Publication 4681, *Canceled Debts, Foreclosures, Repossessions and Abandonments*. **IRS Tax Tip 2013-31**.

FIRST-TIME HOME BUYER CREDIT. The taxpayer was physically and mentally handicapped and lived with parents in their home. The taxpayer was represented by an accountant as guardian. The accountant arranged as guardian to purchase the parents' home for the amount of money owed on the mortgage after the parents had fallen behind in the payments. The home was purchased with funds held for the taxpayer from a personal injury settlement and the guardian held title to the home as guardian for the taxpayer. The guardian filed the taxpayer's income tax return and claimed the first-time home buyer's credit for the taxpayer. The court held that, although the purchase was structured as a purchase of the home by the accountant, the reality of the transaction was that the home was purchased by the taxpayer; therefore, the first-time home buyer's credit was not available to the taxpayer as a related person purchasing the parents' home. The appellate court affirmed in a decision designated as not for publication. **W.E.R. v. Comm'r, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,229 (11th Cir. 2013),** ***aff'g sub. nom.*****, Rodriguez v. Comm'r, T.C. Memo. 2011-122**.

HOBBY LOSSES. The taxpayer was an accountant and owned and operated an accountancy practice. The taxpayer purchased an 18 acre rural property and built barns and fences suitable for raising horses. The taxpayer attempted to successfully breed Morgan horses for sale. The taxpayer had the horses trained by other people and made several attempts to produce high-value horses without much success. After $1.4 million in tax losses over 16 years, ending in 2011, the IRS disallowed losses in excess of revenues for 2007 and 2008. The court held that the taxpayer did not operate the horse breeding activity with the intent to make a profit because (1) the taxpayer did not have a written business plan, budget or business analysis which were used to make changes to make the operation profitable, (2) the taxpayer did not maintain a separate bank account for the horse operation, (3) the taxpayer had not operated a similar business profitably, (4) the operation had only losses over 16 years, and (5) the horse breeding losses offset significant income from the accounting practice. **Dodds v. Comm'r, T.C. Memo. 2013-76**.

HOME OFFICE. The IRS has published information on the home office deduction. Generally, in order to claim a deduction for a home office, the taxpayer must use a part of your home exclusively and regularly for business purposes. In addition, the part of the taxpayer's home that the taxpayer uses for business purposes must also be: the taxpayer's principal place of business; a place where the taxpayer meets with patients, clients or customers in the normal course of the business; or a separate structure not attached to the home. Examples might include a studio, workshop, garage or barn. In this case, the structure does not have to be the taxpayer's principal place of business or a place where the taxpayer meets patients, clients or customers. A taxpayer does not have to meet the exclusive use test if the taxpayer uses part of the home to store inventory or product samples. The exclusive use test also does not apply if the taxpayer uses part of the home as a daycare facility. The home office deduction may include part of certain costs that the taxpayer paid for having a home. For example, a part of the rent or allowable mortgage interest, real estate taxes and utilities could qualify. The amount a taxpayer can deduct usually depends on the percentage of the home used for business. The deduction for some expenses is limited if the gross income from the business use of your home is less than the total business expenses. If a taxpayer is self-employed, use Form 8829, *Expenses for Business Use of Your Home*, to figure the deductible amount. Report your deduction on Schedule C, Profit or Loss From Business. If the taxpayer is an employee, the taxpayer must meet additional rules to claim the deduction. For example, in addition to the above tests, the taxpayer's business use must also be for the taxpayer's employer's convenience. For more information, see Publication 587, *Business Use of Your Home*. **IRS Tax Tip 2013-36**.

INCOME FOR DEPENDENTS. The IRS has published information about taxation of investment income for dependents. Some children receive investment income and are required to file a federal tax return. If a child cannot file his or her own tax return for any reason, such as age, the child's parent or guardian is responsible for filing a return on the child's behalf. There are special tax rules that affect how parents report a child's investment income. Some parents can include their child's investment income on their tax return. Other children may have to file their own tax return. Investment income normally includes interest, dividends, capital gains and other unearned income, such as from a trust. Special rules apply if the child's total investment income is more than $1,900. The parent's tax rate may apply to part of that income instead of the child's tax rate. If a child's total interest and dividend income is less than $9,500, the parent may be able to include the income on the parent's tax return. See Form 8814, *Parents' Election to Report Child's Interest and Dividends*. If the parent makes this choice, the child does not file a return. Children must file their own tax return if they received investment income of $9,500 or more. File Form 8615, *Tax for Certain Children Who Have Investment Income of More Than $1,900*, with the child's federal tax return. For more information on this topic, see Publication 929, *Tax Rules for Children and Dependents*. **IRS Tax Tip 2013-38**.

INNOCENT SPOUSE RELIEF. The taxpayer was employed full time and the taxpayer's spouse owned and operated a construction company. The taxpayer was separated from the spouse and had filed for divorce but did not provide any evidence that the divorce had become final. The couple had filed joint returns for 2003 through 2007 in 2008 but did not pay the taxes. The taxpayer was aware of the finances of the construction company and knew that the company had filed for bankruptcy. The company was indebted to the spouse's parent. The court denied innocent spouse relief for the taxpayer for the unpaid taxes because (1) the couple were not divorced, (2) the taxpayer was aware of the financial difficulties of the spouse and knew the taxes would not be paid, and (3) payment of the taxes would not cause a financial hardship for the taxpayer. **Williamson v. Comm'r, T.C. Memo. 2013-78**.

IRA. The IRS has published information about early withdrawals from retirement plans. An early withdrawal normally means taking money from a taxpayer's plan, such as a 401(k), before the taxpayer reaches age 59½. A taxpayer must report the amount the taxpayer withdrew from a retirement plan to the IRS. A taxpayer may have to pay an additional 10 percent tax on the withdrawal. The additional 10 percent tax normally does not apply to nontaxable withdrawals. Nontaxable withdrawals include withdrawals of a taxpayer's cost in participating in the plan. A taxpayer's cost includes contributions that the taxpayer paid tax on before the taxpayer put them into the plan. If a taxpayer transfers a withdrawal from one qualified retirement plan to another within 60 days, the transfer is a rollover. Rollovers are not subject to income tax. The added 10 percent tax also does not apply to a rollover. There are several other exceptions to the additional 10 percent tax. These include withdrawals if the taxpayer has certain medical expenses or if the taxpayer is disabled. Some of the exceptions for retirement plans are different from the rules for IRAs. For more information on early distributions from retirement plans, see IRS Publication 575, *Pension and Annuity Income* and Publication 590, *Individual Retirement Arrangements (IRAs)*. **IRS Tax Tip 2013-35**.

INTERNAL REVENUE BULLETINS. The IRS has announced that it will no longer publish printed copies of the *Internal Revenue Bulletin* and will no longer create the *Cumulative Bulletin* after the 2008-2 edition. **Ann. 2013-12, I.R.B. 2013-11, 651**.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company taxed as a partnership. Several interests in the taxpayer were sold during a tax year but the taxpayer's tax advisors did not inform the taxpayer about the election to adjust the taxpayer's basis of LLC property. The IRS granted an extension of time to file the election. **Ltr. Rul. 201311016, Nov. 2012**.

PENSION PLANS. The rates reflect certain changes implemented by the Moving Ahead for Progress in the 21st Century Act (*Pub. L. No. 112-141*). For plans beginning in March 2013 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.17 percent. The corporate bond weighted average is 3.57 percent, and the 90 percent to 105 percent permissible range is 3.19 percent to 3.72 percent. The 24-month average corporate bond segment rates for March 2013, without adjustment by the

25-year average segment rates are: 1.54 for the first segment; 4.28 for the second segment; and 5.32 for the third segment. The 24-month average corporate bond segment rates for March 2013, taking into account the 25-year average segment rates, are: 4.94 for the first segment; 6.15 for the second segment; and 6.76 for the third segment. **Notice 2013-23, I.R.B. 2013-16**.

PROPERTY TAXES. In 2011, California enacted legislation requiring the State Board of Equalization to charge an amount not to exceed $150 as a fire prevention fee (the fire fee) on each structure within a state responsibility area. *Cal. Pub. Res. Code § 4212(a)(1)*. A "state responsibility area" is an area of the state "in which the financial responsibility of preventing and suppressing fires has been determined by the [Board of Forestry and Fire Protection]… to be primarily the responsibility of the state." The legislation requires an appeals process separate and distinct from that in the Fee Collection Procedures Law in which the Department of Forestry and Fire Prevention, not the State Board of Equalization, determines whether the feepayer is liable for the fee. *Cal. Pub. Res. Code §§ 4213(2), 4220*. Thus, a feepayer may not file a petition for redetermination of the fee with the State Board under the Fee Collection Procedures Law as the feepayer might for other fees. In a Chief Counsel Advice letter, the IRS ruled that California residents may not deduct the Fire Prevention Fee as a real property tax deduction because (1) the fee is not a tax under California or federal law (2) the fee is not levied at a like rate, (3) the fee is not imposed throughout the taxing authority's jurisdiction, and (4) the fee is assessed only against specific property to provide a local benefit. **CCA 201310029, Jan. 14, 2013**.

REFUNDS. The IRS has published information about 2009 unclaimed tax refunds. *Not required to file*. Taxpayers may not have filed a 2009 tax return because they did not earn enough income to have a filing requirement. If a taxpayer had taxes withheld from wages or made quarterly estimated payments, the taxpayer can still file a return and claim the refund. *Three-year window*. Taxpayers have three years to claim a refund. If a taxpayer does not claim a refund within three years, the money becomes property of the U.S. Treasury. For 2009 returns, the window closes on April 15, 2013. Taxpayers must properly address, postmark and mail their return by that date. There is no penalty for filing a late return if a taxpayer is due a refund. *Don't miss the EITC*. By not filing a return, a taxpayer may miss an important credit — the Earned Income Tax Credit. For 2009, the credit is worth as much as $5,657. The EITC can put extra money in the pockets of individuals and families with low and moderate incomes. If a taxpayer is eligible for the EITC, the taxpayer must file a federal income tax return to claim the credit. This is true even if the taxpayer is not otherwise required to file. *Some refunds applied*. The IRS may hold a refund if the taxpayer has not filed tax returns for 2010 and 2011. The law allows the use of a federal tax refund to pay any amounts still owed to the IRS or the taxpayer's state tax agency. If a taxpayer has unpaid debts, such as overdue child support or student loans, the refund may be applied to pay that debt. **IRS Special Edition Tax Tip 2013-07**.

REPAIR ALLOWANCE. Taxpayer was a member of an affiliated group of corporations that is headed by a parent corporation and filed consolidated federal income tax returns. The parent corporation and the taxpayer used the accrual method of accounting and are calendar year taxpayers. The taxpayer was a vertically integrated regulated electric company serving retail customers. The parent corporation timely filed the consolidated federal income tax returns for each of the taxable years involved. On each of these returns, the taxpayer claimed the deduction for a repair allowance pursuant to I.R.C. § 1.167(a)-11(d)(2)(ii) for certain expenditures associated with certain property placed in service by the taxpayer before 1981. The parent corporation and the taxpayer, however, inadvertently failed to attach a repair allowance election statement to each of these consolidated federal income tax returns. The IRS granted an extension of time to file the election statements. **Ltr. Rul. 201308007, Nov. 19, 2012**.

RETURNS. The IRS has published a notice which provides transitional relief for additions to tax under I.R.C. § 6651(a)(2) due to the delayed publication of some IRS forms relating to the 2012 tax year. Generally, the IRS automatically assesses the I.R.C. § 6651(a)(2) addition to tax against taxpayers who pay late, and then it sends notice and demand for payment of the addition to tax. For each taxpayer who requests or has requested an extension to file a 2012 income tax return that includes one of the forms listed in the Notice, the IRS will deem the taxpayer to have demonstrated reasonable cause and lack of willful neglect, provided a good faith effort was made to properly estimate the tax liability on the extension application, the estimated amount is paid by the original due date of the return, and any tax owed on the return is fully paid no later than the extended due date of the return. The IRS will abate any I.R.C. § 6651(a)(2) additions to tax assessed with respect to these 2012 income tax returns. When responding to the assessment notice, a taxpayer should submit a letter describing the taxpayer's eligibility for this relief, identifying which of the form(s) listed in the notice was included with the taxpayer's return as filed, and referencing this notice by number, Notice 2013-24, to the address listed in the assessment notice. **Notice 2013-24, I.R.B. 2013-16**.

IRS has issued general requirements and conditions for the development, printing and approval of all substitute tax forms to be acceptable for filing in lieu of official IRS-produced and distributed forms. **Rev. Proc. 2013-17, I.R.B. 2013-11, 612**.

SAFE HARBOR INTEREST RATES

April 2013

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.22	0.22	0.22	0.22
110 percent AFR	0.24	0.24	0.24	0.24
120 percent AFR	0.26	0.26	0.26	0.26
		Mid-term		
AFR	1.09	1.09	1.09	1.09
110 percent AFR	1.20	1.20	1.20	1.20
120 percent AFR	1.31	1.31	1.31	1.31
		Long-term		
AFR	2.70	2.68	2.67	2.67
110 percent AFR	2.97	2.95	2.94	2.93
120 percent AFR	3.25	3.22	3.21	3.20

Rev. Rul. 2013-9, I.R.B. 2013-15.

S CORPORATIONS

SUBSIDIARY. The taxpayer was an S corporation which purchased two other S corporations which the taxpayer intended to be treated as qualified subchapter S subsidiaries (QSubs). However, the taxpayer inadvertently failed to timely file Forms 8869, *Qualified Subchapter S Subsidiary Election*, for the subsidiaries. The IRS granted an extension of time to file the Forms 8869. **Ltr. Rul. 201310022, Nov. 27, 2012**.

Agricultural Law Press
127 Young Rd., Kelso, WA 98626

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law.

The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days, with separate pricing for each combination. On the first day, Dr. Harl will speak about farm and ranch income tax. On the second day, Dr. Harl will cover farm and ranch estate and business planning. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. **Online registration is available at www.agrilawpress.com.**

Three locations and dates to choose from this spring (see page 50 above for the rest of the 2013 schedule):

April 29-30, 2013, Osage Beach, MO **Tan-Tar-A Resort, 494 TanTarA Dr., Osage Beach, MO**

May 6-7, 2013, Grand Island, NE **Quality Inn & Conference Center, 7838 S. Highway 281, Grand Island, NE**

May 30-31, 2013, Greeley, CO, **Clarion Inn & Conference Center, 701 8th St., Greeley, CO**

The topics include:

First day

FARM INCOME TAX

New Legislation

Reporting Farm Income

- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions

- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

Sale of Property

- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges

- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

Taxation of Debt

- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

Second day

FARM ESTATE AND BUSINESS PLANNING

New Legislation

Succession planning and the importance of fairness

The Liquidity Problem

Property Held in Co-ownership

- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax

- The gross estate
- Special Use Valuation
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the new regulations
- Federal estate tax liens
- Undervaluations of property

Gifts

- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust

The General Partnership

- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships

Limited Liability Companies

- Developments with passive losses
- Corporate-to-LLC conversions
- Eligibility for "small partnership" exception
- New regulations for LLC and LLP losses

Closely Held Corporations

- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock

Status of the Corporation as a Farmer

- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries

Financing, Estate Planning Aspects and Dissolution of Corporations

- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization

Social Security

- In-kind wages paid to agricultural labor

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